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PART V

ENVIRONMENTAL PROTECTION AGENCY

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Proposed Requirements for Spill Prevention Control and Countermeasure Plans to Prevent Discharges of Hazardous Substances From Certain Facilities

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 151]

[913-1]

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM OF THE CLEAN WATER ACT

Hazardous Substances Pollution Prevention for Facilities subject to Permitting Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule would establish requirements for spill prevention control and countermeasure plans to prevent discharges of hazardous substances from facilities subject to permitting requirements under the National Pollutant Discharge Elimination System of the Clean Water Act (hereafter "the Act").

DATE: Comments on this proposal will be received on or before October 31, 1978.

ADDRESS: Interested persons may participate in this rulemaking by submitting comments to: Mr. Henry D. Van Cleave, Chief, Spill Prevention and Control Branch (WH-548), Division of Oil and Special Materials Control, Office of Water Program Operations, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. After consideration of the comments received in response to this proposal, a notice of final rulemaking will be issued.

FOR FURTHER INFORMATION CONTACT:

Mr. Henry D. Van Cleave, 202-245-3045.

SUPPLEMENTARY INFORMATION: Section 311(j)(1)(C) of the Clean Water Act (Pub. L. 92-500, as amended by Pub. L. 95-217) authorizes the President to issue regulations establishing procedures, methods and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities and to contain such discharges.

Section 304(e) of the Act authorizes the Administrator to publish regulations to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which may contribute significant amounts of toxic and hazardous pollutants to navigable waters.

The purpose of these proposed regulations is to prevent discharges of hazardous substances from facilities which are subject to permitting requirements of section 402 of the Act. It is anticipated that in the near future, additional regulations will be published for all other facilities subject to the authority of the Environmental Protection Agency so that hazardous substances pollution prevention regulations will exist for all non-transportation related facilities.

The approach used in this regulation is similar to the one developed and used in EPA's oil pollution prevention regulation, 40 CFR Part 112. This is the concept of the spill prevention control and countermeasure (SPCC) plan. The SPCC plan is developed by the owner or the operator of a facility, or by his/her engineer, in accordance with guidelines contained in the regulation. The plan must be certified by a registered professional engineer and must be implemented by the owner or operator.

These regulations are being proposed concurrently with regulations under section 402 of the Act (40 CFR Part 125, Subpart L). Under the section 402 rgulations, permittees would be required to develop best management practices (BMP) plans to prevent the release of toxic and hazardous pollutants to surface waters. The requirements of the two proposed regulations (40 CFR Part 151 and 40 CFR Part 125) have been coordinated. Compliance with SPCC plan requirements would be established as a minimum level of control for BMP plans.

The purpose of publishing the two regulations concurrently is to allow the owner or operator of a permitted facility to develop BMP and SPCC plans concurrently and thereby avoid duplication of environmental controls. SPCC plans, as required by this regulation, may be incorporated into BMP plans by reference.

Dated: August 24, 1978.

DOUGLAS M. COSTLE,
Administrator.

PART 151—HAZARDOUS SUBSTANCES POLLUTION PREVENTION FOR FACILITIES SUBJECT TO PERMITTING REQUIREMENTS OF SECTION 402 OF THE FEDERAL WATER POLLUTION CONTROL ACT

Sec.

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AUTHORITY: Secs. 304(e), 311(j)(1)(C), 311(j)(2), 501(a), Clean Water Act (Pub. L. 92-500, as amended by Pub. L. 95-217, 33 U.S.C. 1251 et seq.); 5 U.S.C. Reorg. Plan of 1970 No. 3 (1970), 35 FR 15623, 3 CFR 1966-1970 Comp.; E.O. 11735, 38 FR 21243, 3 CFR, unless otherwise noted.

§ 151.1 General applicability.

(a) This part establishes procedures, methods, and equipment and other requirements for equipment to prevent the discharge of hazardous substances from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974 or which may affect natural resources belonging, appertaining to, or under the exclusive management authority of the United Stated (including resources under the Fishery Conservation and Management Act of 1976).

(b) This part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in producing, storing, processing, refining, handling, transferring, distributing, or consuming hazardous substances and which are subject to national pollutant discharge elimination system (NPDES) permitting requirements under section 402 of the act.

(c) This part provides for the preparation and implementation of spill prevention control and countermeasure plans prepared in accordance with § 151.7 designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention and pollution prevention so as to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for discharges of hazardous substances. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.

§ 151.2 Definitions.

For the purposes of this part:

(a) "Hazardous substances" means those substances listed as hazardous in 40 CFR Part 116.

(b) "Discharge" includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into or upon the navigable waters of the United States or adjoining shore lines or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974 or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the

Fishery Conservation and Management Act of 1976).

(c) "Onshore facility" means any facility of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

(d) "Offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

(e) "Owner or operator" means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment.

(f) "Person" includes an individual, firm, corporation, association, partnership and a Federal, State, and local agency.

(g) "Enforcement Division Director" means the Director of any enforcement division within any regional office of the Environmental Protection Agency or the delegated representative of the Enforcement Division Director.

(h) "Regional Administrator," means the Regional Administrator of the Environmental Protection Agency, or his/her designee, in and for the region in which the facility is located.

(i) "Administrator" means the Administrator of the U.S. Environmental Protection Agency or his/her designee.

(j) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(k) "Navigable waters" is defined in section 502(7) of the act to mean "waters of the United States, including the territorial seas." This term includes but is not limited to:

(1) All waters which are presently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, intermittent streams, and including adjacent wetlands. "Wetlands" includes those areas such as swamps, marshes, bogs, and similar ares that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Tributaries of navigable waters of the United States, including adjacent wetlands;

(3) Interstate waters, including wetlands; and

(4) All other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats, and wetlands, the use, degradation or destruction of which would affect or could affect interstate commerce including but not limited to:

(i) Intrastate lakes, rivers, streams, and wetlands which are or could be used by interstate travelers for recreational or other purposes; and

(ii) Intrastate lakes, rivers, streams, and wetlands from which fish are or could be taken and sold in interstate commerce; and

(iii) Intrastate lakes, rivers, streams, and wetlands which are used or could be used for industrial purposes by industries in interstate commerce.

(5) All impoundments of waters of the United States otherwise defined as navigable waters under this paragraph.

(l) "Contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(m) "Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles.

(n) "Act" means the Clean Water Act (Pub. L. 92-500, as amended by Pub. L. 95-217) also known as the Federal Water Pollution Control Act.

§ 151.3 Requirements for preparation and implementation of spill prevention control and countermeasure plans.

(a) Owners or operators of onshore and offshore facilities in operation on or before the effective date of this part which are subject to NPDES permitting requirements under section 402 of the Act and 40 CFR Part 122 shall prepare a spill prevention control and countermeasure plan (hereafter "SPCC plan" or "plan"), in writing and in accordance with § 151.7. Except as provided for in paragraphs (b), (c), and (f) of this section, the SPCC plan shall be prepared within 6 months of the modification or issuance of an NPDES permit for the facility and shall be fully implemented as soon as possible but not later than 1 year after the modification or issuance of the permit.

(b) Owners or operators of onshore and offshore facilities that become operational after the effective date of this part shall prepare an SPCC plan in accordance with § 151.7. Except as provided for in paragraph (f) of this section, such SPCC plan shall be prepared before the date such facility begins operations and shall be fully implemented as soon as possible but no later than 6 months after the facility begins operations.

(c) Owners or operators of onshore and offshore mobile or portable facilities shall prepare and implement an SPCC plan as required by paragraphs (a), (b), and (d) of this section. The owners or operators of such facility need not prepare a new SPCC plan each time the facility is moved to a new site. The SPCC plan may be a general plan, prepared in accordance with § 115.7, using good engineering practices. When the mobile or portable facility is moved, it must be located and installed using the spill prevention practices outlined in the SPCC plan for the facility. No mobile or portable facility subject to this regulation shall operate unless the SPCC plan has been prepared and implemented. The SPCC plan shall only appy while the facility is in a fixed (nontransportation) operating mode.

(d) No SPCC plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a registered professional engineer and certified to by such professional engineer. By means of this certification the engineer shall attest to the fact that: (1) He/she has examined the facility, (2) he/she is familiar with provisions of this part, (3) the SPCC plan has been prepared in accordance with good engineering practice and with § 151.7. Deviations from the requirements of § 151.7 shall be identified in the SPCC plan and the engineer's reasons for such deviations shall be stated. This certification shall in no way relieve the owner or operator of an onshore or offshore facility of the duty to prepare and fully implement an SPCC plan in accordance with § 151.7, as required by paragraphs (a), (b), and (c) of this section.

(e) Owners or operators of a facility for which an SPCC plan is required under paragraphs (a), (b), or (c) of this section shall: (1) Maintain a complete copy of the plan at the facility (2) make the plan available to the Regional Administrator for onsite review during normal working hours, and (3) mail a complete copy of the plan to the Regional Administrator immediately upon demand.

(f) Extensions of time.

(1) The Enforcement Division Director may authorize an extension of time for the preparation and full implementation of an SPCC plan beyond the time allowed for the preparation and implementation of an SPCC plan under paragraphs (a), (b), or (c) of this section where he/she finds that the owner or operator cannot fully comply

with the requirements of this part, despite all good faith and reasonable efforts.

(2) Any owner or operator seeking an extension of time under paragraph (f)(1) of this section shall submit a letter of request to the Enforcement Division Director. This letter shall include:

(i) A complete copy of the SPCC plan, if completed;

(ii) A full explanation of the cause for the delay and the specific aspects of the SPCC plan affected by the delay;

(iii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;

(iv) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation, and operation of any necessary equipment or other preventive measures; and

(v) Other information relevant to the request.

(3) The submission of a letter of request for extension of time under paragraph (f)(2) of this section shall in no way relieve the owner or operator from his/her obligation to comply with the requirements of § 151.3 (a), (b), or (c). Where an extension of time is authorized by the Enforcement Division Director for particular equipment or other specific aspects of the SPCC plan, this extension shall in no way affect the owner's or operator's obligation to comply with the requirements of § 151.3 (a), (b), or (c) with respect to other equipment or other specific aspects of the SPCC plan for which an extension of time has not been expressly authorized.

§ 151.4 Amendment of SPCC plans by Enforcement Division Director.

(a) Notwithstanding compliance with § 151.3, whenever a facility subject to § 151.3 (a), (b), or (c) has discharged hazardous substances in harmful quantities as determined in 40 CFR part 118 or in violation of a permit issued under section 402 of the Act, the owner or operator of the facility shall submit to the Enforcement Division Director, within 60 days from the time such facility becomes subject to this section, the following:

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Date and year of initial facility operation;

(5) Permit number under section 402;

(6) Maximum storage and handling capacity of the facility and normal daily throughput;

(7) Description of the facility, including maps, flow diagrams, and topographical maps;

(8) A complete copy of the SPCC plan with any amendments;

(9) The cause(s) of the spill, including a failure analysis of system or subsystem in which the failure occurred;

(10) The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(11) Additional preventive measures taken or contemplated to minimize the possibility of recurrence; and

(12) Such other information as the Enforcement Division Director may reasonably require pertinent to the plan or discharge.

(b) The requirements of this section shall not apply until the expiration of the time permitted for the preparation and implementation of an SPCC plan under § 151.3 (a), (b), (c), and (f).

(c) A complete copy of all information provided to the Enforcement Division Director under paragraph (a) of this section shall be sent at the same time to the State agency in charge of water pollution control activities in the State in which the facility is located and in the State in which the discharge occurred, if not the same. Upon receipt of such information, the State agencies may conduct a review and make recommendations to the Enforcement Division Director as to further procedures, methods, equipment, and other requirements for equipment necessary to prevent and to contain discharges of hazardous substances from such facility.

(d) After review of the SPCC plan for a facility subject to paragraph (a) of this section, together with all other information submitted by the owner or operator of such facility, and by the State agencies under paragraph (c) of the section, the Enforcement Division Director may require the owner or operator of such facility to amend the SPCC plan if he/she finds that the plan does not meet the requirements of this part or that the amendment of the plan is necessary to prevent and to contain discharges of hazardous substances from such facility.

(e) When the Enforcement Division Director proposes to require an amendment to the SPCC plan, he/she shall notify the facility operator by certified mail addressed to, or by personal delivery to, the facility owner or operator, that he/she proposes to require an amendment to the plan, and shall specify the terms of the amendment. If the facility owner or operator is a corporation, a copy of such notice shall also be mailed to the registered agent, if any, of the corporation in the State where the facility is located. Within 30 days from receipt of this notice, the facility owner or operator may submit written information, views, and arguments on the amendment. After considering all relevant materials presented, the Enforcement Division Director shall notify the facility owner or operator of any amendment required or shall rescind the notice. The amendment required by the Enforcement Division Director shall become part of the plan 30 days after such notice, unless the Enforcement Division Director for good cause, shall specify another effective date. The owner or operator of the facility shall implement the amendment to the plan as soon as possible but not later than 6 months after the amendment becomes part of the plan unless the Enforcement Division Director specifies another date.

(f) An owner or operator may appeal a decision made by the Enforcement Division Director requiring an amendment to an SPCC plan by requesting an evidentiary hearing in accordance with 40 CFR 124.74. Subsequent appeals to the Regional Administrator and the Administrator, respectively, may be made in accordance with 40 CFR part 124, subpart I.

§ 151.5 Amendment of spill prevention control and countermeasure plans by owners or operators.

(a) Owners or operators of facilities subject to § 151.3 (a), (b), or (c) shall amend the SPCC plan for such facility in accordance with § 151.7 whenever there is a change in facility design, construction, operation or maintenance which materially affects the facility's potential for the discharge of hazardous substances. These amendments shall be fully implemented as soon as possible, but not later than 6 months after a change occurs.

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 151.3 (a), (b), or (c) shall complete a review and evaluation of the SPCC plan upon permit issuance, reissuance, or modification. As a result of this review and evaluation, the owner or operator shall amend the SPCC plan within 6 months of the review to include more effective prevention and control technology if such technology will significantly reduce the likelihood of a spill or discharge from the facility. The owner or operator shall affix a signed and dated statement to the SPCC plan at the completion of the review indicating that a review has taken place and whether an amendment to the plan was or was not determined to be necessary.

(c) No amendment to an SPCC plan shall be effective to satisfy the requirements of this section unless it has been certified by a professional engineer in accordance with § 151.3(d).

§ 151.6 Civil penalties for violation of hazardous substances pollution prevention regulations.

Owners or operators of facilities subject to § 151.3 (a), (b), or (c) who violate the requirements of this part 151 by failing or refusing to comply with any of the provisions of § 151.3, § 151.4 or § 151.5 shall be liable for a civil penalty of not more than $5,000 for each day such violation continues. This subsection shall not apply to Federal agencies.

§ 151.7 Guidelines for the preparation and implementation of a spill prevention control and countermeasure plan.

The SPCC plan shall be prepared in accordance with good engineering practices, and the requirements of § 151.7 and shall have full approval of management at a level with authority to commit the necessary resources. The plan shall be in narrative form and shall describe all of the preventive systems or major preventive features required by these guidelines. Where maps, drawings, or plot plans are necessary to describe the prevention practices at the facility, they shall be included in the plan. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items shall be discussed in separate paragraphs, and the details of installation and operational startup shall be explained. The complete SPCC plan shall follow the sequence outlined below, and include a discussion of the facilities' conformance with the applicable requirements. Where the SPCC plan does not conform to the applicable requirements, the SPCC plan shall so indicate, stating the reasons for nonconformance and indicate the alternative methods to achieve equivalent protection.

(a) A facility which has experienced one or more discharges within 12 months prior to the effective date of this part shall include a written description of each incident, corrective action taken and plans for preventing recurrence.

(b) Considering local drainage patterns and facility storage capacity and throughput, the plans shall include a prediction of the direction, rate of flow and total quantity of hazardous substances which could be discharged from the facility as a result of a major failure or accident.

(c) General requirements:

(1) Appropriate containment, drainage control and/or diversionary structures shall be provided. One of the following preventive systems as prescribed in § 151.7(d) or its equivalent shall be used as a minimum:

(i) Dikes, berms, retaining walls, impounding basins, diversion ponds, retention ponds or other forms of secondary containment. Secondary containment systems shall be sufficiently impervious to contain spilled hazardous substances.

(ii) Curbing culverting, gutters, sewers or other forms of drainage control.

(iii) Roofs, covers or other forms of protection to prevent storage piles from windblowing and leaching.

(d) Specific requirements:

(1) *Liquid storage areas.* Tank or container materials shall be compatible with the material stored. Secondary containment, sufficent to contain the capacity of the largest single container or tank in the drainage system shall be provided. If the drainage area is subject to precipitation, a reasonable allowance for its accumulation, based on local weather conditions and plant operation, shall be provided over and above the volume necessary to contain the largest single tank or container. Secondary containment systems shall be sufficiently impervious to contain spilled hazardous material until it can be removed or treated. The plant treatment system may be used to provide secondary containment provided it has sufficient excess holding capacity always available to hold the contents of the largest container in the drainage area plus a reasonable allowance for precipitation.

(2) *Raw material storage areas (other than liquids).* Raw materials storage areas which are subject to runoff, leaching, or windblowing shall incorporate drainage or other control features which will prevent the discharge of hazardous substances. Drainage control shall direct contaminated runoff or leachate to treatment systems or to other areas for disposal, which shall be described in the plan.

(3) *Plantsite runoff other than from areas covered by (1) and (2).* Other areas of the facility from which runoff or spills of hazardous materials could cause a discharge shall incorporate the necessary drainage or other control features to prevent discharge and to insure the treatment or disposal of runoff, spilled material or leachate as in paragraph (d)(2) of this section.

(4) *Truck and rail car liquid loading and unloading areas* shall contain sufficient secondary containment or treatment capacity to hold or treat the largest tank truck or rail car or the largest compartment of a tank truck or rail car if the tanks are compartmented, which is loaded or unloaded at the facility. If the secondary containment is provided in the treatment system, it must be designed so that the extra available capacity always exists to contain a spill of the largest container using the loading and unloading areas, plus a reasonable allowance for precipitation.

(5) *In plant transfer, process and materials handling areas.* Piping, processing equipment and materials handling equipment shall be designed and operated so as to prevent discharges of hazardous substances. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall be designed as described in paragraph (d) (1), (2), and (3) of this section. Additional protection such as covers or guards to prevent windblowing, spraying or releases from pressure relief vents from causing a discharge of hazardous substances shall be provided as appropriate.

(6) *Preventive maintenance and housekeeping.* All areas of the facility shall be inspected at specified intervals for leaks or conditions that could lead to discharges. In particular, plant piping, pumps, storage tanks and bins, pressure vessels, process and materials handling equipment and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspections shall include examinations for leaks, windblowing, corrosion, support or foundation failure or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered, corrective action shall be immediately taken or the unit or process shut down until corrective action can be taken. When a leak or noncontainment has occurred, contaminated soil, debris, or other material must be promptly removed and disposed of in accordance with Federal, State, or local requirements and as described in the plan.

(7) *Release of rainwater from diked or other drainage areas.* Only uncontaminated rainwater may be released from diked or other plant drainage areas unless the released water will be given approved treatment. The release of rainwater or snowmelt shall be supervised as specified in the plan and only after sufficient testing to assure that there will be no discharge.

(8) *Facility security.* Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings. While it is recognized that it may be impossible to stop a determined and well-equipped vandal, a reasonable effort will dscourage most intentional and almost all accidental entry problems.

(9) *Training.* Facility employees and contractor personnel using the facility

shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan but not less than once per year, in matters of pollution control laws and regulations, and in the SPCC plan and the particular features of the facility and its operations which are designed to prevent discharges. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills or emergency releases of hazardous substances can be isolated and contained before a discharge can occur. Contractor or temporary personnel shall be informed of those plant operating and design features which they should know about in order to prevent discharges or spills from occurring.

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